THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 19990 OF 2002

O R D E R :

1. Order dated 29-4-2002 passed by the Joint Collector, Ranga Reddy District on a revision filed under Section 9 of the Andhra Pradesh Rights in Pattadar Pass Books Act (herein after referred to as the "Act, 1971") is under challenge in this Writ Petition.

2. The facts of the case in brief are:-

Smt. Sultan Jahan Begum-1st petitioner filed C.S.No.7 of 1958 for partition, separation possession of her share in the properties of her father late Nawab Moinuddowlah Bahadur. A preliminary decree came tobe passed on 6-4-1959 in terms of Memorandum of Compromise dated 12-12-1958. A final deree came to be passed on 13-2-1970 as per order in I.A.No.228 of 1969. The suit land known as "Kancha Bal Amarai" was put to auction on 24-12-1960 wherein the 1st petitioner herein became the successful bidder having offered Rs.22,000/-. Sale in her favour came to be confirmed on an application No. 10/61 by order dated 20-01-1961 She was put in possession of the land Survey No. 324 to 335 (old survey Nos 1to 12) admeasuring Ac. 216.32 guntas of Narkhoda village. She executed a settlement deed dated 1-12-1964 in favour of Petitioners No. 2 to 12 in respect of the land which she purchased in the auction held on 24-12-1960. Petitioners 2 to 12 took possession of the land in pursuance of the Settlement Deed dated 1-12-1964. Pending the final decree proceedings, the Court appointed Raja Kishan Das and Mohd. Saleem Khan as receivers to manage certain properties, identify and sell such identified properties in order to pay state dues assessable to Government revenue. Their names were mutated in all the concerned revenue records and Pattadar Pass Books were issued in their names

in the year 1985. They also filed declarations under the provisions of Land Reforms Act. The Land Ceiling Tribunal found them as non-surplus holder. The unofficial respondents filed three applications being Applications Nos. 295 of 1988, 297 of 1988, 298 of 1988 in C.S.NO. 7 of 1958. The prayer sought for in Application No. 295/1988 was to direct the 13th respondent to divide the land admeasuring Ac. 216.32 guntas comprising New Survey Nos. 324 to 335 (old survey Nos. 1 to 12) of Narkhoda village, Shamshabad Manda, Shamshabad between the petitioners Nos. 2 to 12 and 14 to 22. The prayer in Application No. 297/1988 was to declare the entries made in the revenue records in favour of the petitioners as null and void. The prayer in the Application No. 298/1988 was to direct the Collector Ranga Reddy and other officials to correct the entries in the pahanies and other concerned revenue records substituting the names of the respondents herein in the place of the names of the petitioners herein. All the three applications ended in dismissal under a common order dated 29-7-1988. The respondents filed revision before the Joint Collector, Ranga Reddy District, questioning the order passed by the Mandal Revenue Officer, Shamshabad in File No. A/1343/88, dated 9-11-1985, mutating the names of the petitioners in the revenue records. The Joint Collector allowed the revision and remanded the matter back to the Mandal Revenue Officer to conduct enquiry afresh. Assailing the order of the Joint Collector, the petitioners filed W.P.No. 3033 of 2000 and the said writ petition came to be disposed of on 19-3-2001. Relevant portion of order needs to be noted and it is thus:-

> "As the matter was already remitted back by the Joint Collector to the Mandal Revenue Officer for fresh enquiry, the Mandal Revenue Officer is directed to consider and decide the issue afresh without the influence or being carried away by the observations made by the Joint Collector in his order dated 4-12-1999".

3. Assailing the orders of the learned Single Judge, the petitioners carried the matter in Appeal and the said appeal being W.A.No. 500 of 2001 came to be dismissed on 9-4-2001. The relevant portion of the order passed in Writ Appeal reads as under:

> "Having heard the Counsel for the parties, we are of the opinion that having regard to the fact that the Joint Collector, while exercising his power of Revision, did no issue any notice upon restoration of the application filed by the respondents herein to the appellant, it will be fit and proper that the Joint Collector decides the matter on merits strictly in terms of Section 9 of the A.P. Rights in Land and Pattadar Pass Books Act, 1971. It would be open to the appellant herein to raise the jurisdictional issue before the said authority. Having regard to the facts and circumstances of this case, the appellant herein is hereby directed to appear before the Joint Collector within three days from date, where upon Joint Collector may fix a date of hearing. The Writ Appeal is accordingly allowed and the orders impugned in the Writ Appeal and the Writ Petition are set aside. No order as to costs".

4. The Joint Collector, on considering the material on record and on hearing parties, allowed the revision setting aside the order of the Mandal Revenue Officer and remanded the matter back to the Mandal Revenue Officer for fresh enquiry after serving notice to all the persons whose names are found in record and who are interested in or affected by the amendment and to any other person. Challenging the said order the present writ petition has been filed.

5. Respondents 1 to 12, 17 to 55 filed counter affidavit.

6. The stand taken by the unofficial respondents is that the petitioners have already filed a suit being O.S.No. 74 of 2004 on the file of II Additional District Judge, Ranga Reddy District in respect of 100 acres and therefore the dispute between the parties is required to

be adjudicated by a Civil Court and till then the entries appearing in the Revenue Records are not required to be disturbed.

7. One D. Hanumantha Rao filed counter-affidavit. He claims to be the agreement holder of the respondents 5 to 39. The counter-affidavit in brief is:

Deponent to the writ affidavit is not a party to the compromise decree dated 6.4.1959 passed in C.S.No.7 of 1958 and therefore he did not acquire any lawful right to the land comprising Sy.Nos.324 to 325 admeasuring Ac.216-32 guntas situated at Narkoda village, Shamshabad Mandal, Ranga Reddy District. The Joint Collector, Ranga Reddy District served notices on the petitioners as well as respondents. The order dated 9-11-1985 of the Mandal Revenue Officer sanctioning mutation in favour of the petitioners 2 to 12 is vitiated by errors of law and the same is contrary to the memorandum of compromise dated 19.12.1958 and compromise decree dated 06.04.1959 passed in C.S.No.7 of 1958. The Mandal Revenue Officer lacks inherent jurisdiction to pass order of mutation in favour of petitioners 2 to 12. The petitioners have not followed the procedure contemplated under Section 54 of CPC for implementation of the partition decree. The compromise decree is not sent for partition by the Collector and what is sent to the Mandal Revenue Officer, Shamshabad is only mutation application dated 24-2-1983 filed by the petitioners 2 to 12 through letter No.L.Dis.B1/19292/83 with a request to take necessary action to implement the Court decree after making enquiry such as the Government interest. Mutation sought by the petitioners 2 to 12 after 19 years of Settlement Deed dated 01.12.1964, is not in accordance with the provisions of A.P. Rights in Land and Pattedar Pass Book Act, 1971 (herein after referred to as 'provisions of the Act'). Under the provisions of the Act, any person acquiring any right as occupant of land by any other methods shall intimate in writing his acquisition of such right to the Mandal Revenue

Officer within 90 days from the date of such acquisition. By virtue of Section 3 of the Act, the Mandal Revenue Officer ceases to have jurisdiction to pass the orders, as the application is barred by limitation. The recording authority shall, before carrying out any amendment in the record of rights, under sub-section (1) or sub-section (2) of Section 5 of the Act issue a notice in writing to all persons whose names are entered in the record of rights and who are interested in or affected thereby to show cause within the period specified therein as to why the amendment should not be carried out. Rule 6 of the A.P.Rights in Land & Pattedar Pass Books Rules 1989 envisages that the Recording Authority shall arrange for the receipt of the statement of claims submitted in response to the notice referred to in Rule 5 and shall also arrange for acknowledging the statement of claim on the duplicate, triplicate copy of claims statement and shall, on the date specified in the notice in this behalf, proceed to hold an inquiry in the village. The compromise decree dated 06.04.1959 in C.S.No.7 of 1958 has become final and operates as resjudicata precluding the parties to the suit and the persons claiming under them from re-agitating the matter. The land comprising survey numbers 324 to 335 admeasuring 216.32 guatas situated at Narkoda Village, Shamshabad Mandal, Ranga Reddy District is not included in the compromise decree and therefore, the land which is not included in the compromise decree cannot be auctioned or sold. The petitioners 2 to 12 have not filed the sale certificate as provided under Order 21, Rule 94 CPC and possession certificate as provided under Order 21, Rule 95 which are statutory documents of title. The paper publication without mentioning the survey numbers, locations and boundaries of the immovable property as provided under Order 7 Rule of CPC is no sale at all. The sale record pertains only to an area of 4800 square yards near Balamrai and not in respect of the land comprising

Sy.Nos.324 to 335 admeasuring Ac.216.32 guntas situated at Narkoda village, which has been upheld by the order of this Court dated 29.07.1988. The 1st petitioner did not acquire any title to the land comprising Sy.Nos.324 to 335 admeasuring Ac.216.32 guntas and it is not included in the compromise decree and is not the subject matter of auction. Under the A.P. Rights in land Pattedar Pass Book Act, 1971 (for short 'the Act'), patta pass book cannot be issued to persons having no lawful title and lawful possession. Respondents 5 to 39 are not made parties in the case No.1/5980/60 before the Revenue Divisional Officer and no notices were served on them and no opportunity was given to them. Under Section 9 of the Act the Joint Collector is vested with the jurisdiction to rectify the errors committed by the recording authorities and appellate authorities. A common order dated 29-7-1988 came to be passed on application Nos.295/1988, 297/1988, 298/1988 wherein observation has been made that the applications are misconceived and without any basis. The Joint Collector, after careful examination of all the suit records and after following the directions issued by this Court on 29.07.1988, passed orders in accordance with law. Petitioners 2 to 12 are respondents in case NO.D4/4488/94 on the file of Joint Collector, Ranga Reddy District and they failed to appear before the Joint Collector for four years after filing the counter. After restoration of the case, petitioners 2 to 12 who are the respondents failed to appear before the Joint Collector and thereupon a publication in 'Rahnumae Deccan' Urdu Daily came to be effected on 19.07.1999 notifying the date of hearing as 26.07.1999. The Joint Collector, on noticing the case records and patent errors of law, violation of statutory procedure under the Act, passed an order of remand directing the Mandal Revenue Officer to conduct fresh enquiry. The petitioners filed W.P.No.3033 of 2000 against the order of remand. This Court by

order dated 19.03.2001 dismissed the writ petition. Petitioners carried the matter in appeal being W.A.No.500 of 2001. The said writ appeal came to be disposed of directing the Joint Collector to decide the matter on merits strictly in accordance with the provision of Section 9 of the Act. The Joint Collector is the statutory authority under the A.P.Rights in Land and Pattedar Pass Book Act, 1971. The findings recorded by the Statutory Authorities, on appreciation of the evidence, are not amenable to writ jurisdiction of the High Court as the writ Court is not a fact finding Court and the writ Court does not exercise appellate jurisdiction. The petitioners without any title and lawful possession have filed O.S.No.563 of 2001 on the file of Principal Senior Civil Judge, Ranga Reddy District and obtained interim orders which were subsequently made absolute. Respondents 5 to 39 preferred CMA No.1700 of 2002 against the orders dated 27.04.2002 in I.A.No.814 of 2001. The said CMA came to be disposed of on 5.11.2002 with a direction to the lower Court to dispose of the suit within six months. The petitioners filed revision under A.P.Telangana Area Land Revenue Act, 1317 Fasli before the Government along with a petiton seeking suspension of the order of the Joint Collector dated 29.04.2002. No interim orders came to be passed in the revision. Petitioners have suppressed the proceedings before the Mandal Revenue Officer and approached this Court by filing writ petition to protract the case on one pretext or the other. Land comprising Sy.Nos.324 to 335 is not included in the compromise decree dated 6.4.1959 in C.S.No.7 of 1958, therefore, the question of putting the said land to auction does not arise. The registered Settlement Deed dated 01.12.1964 is a fraudulent and sham document and the respondents have no knowledge about the said document.

8. One V.T.Prakash has sworn to the counter-affidavit filed on behalf of the respondent Nos.27,32,33 and 36. The sum and substance of the counter-affidavit is that the petitioners have

misrepresented before the Mandal Revenue Officer and fraudulently obtained mutation and R.O.R.Pass Books without any notice or opportunity to these respondents. The respondents after coming to know about the said mutation in favour of the petitioners filed appeal before the Joint Collector on 22.08.1988 and the Joint Collector, on hearing the parties, allowed the appeal setting aside the mutation and remanded the matter back to the Mandal Revenue Officer for fresh enquiry. Aggrieved by the said order of remand, the petitioners have filed W.P.No.3033 of 2000 and the said writ petition ended in dismissal on 19.03.2001 on the ground that the matter was already remanded back to the Mandal Revenue Officer. The unsuccessful parties challenged the said order by filing a W.A.No.500 of 2001. The said writ appeal came to be disposed of on 09.04.2001 directing the appellants therein ie., writ petitioners herein to appear before the Joint Collector within three days and the Joint Collector was directed to fix the date of hearing and decide the matter. Thereupon, the Joint Collector heard all the parties and passed a detailed order dated 29.04.2002 setting aside the mutation sanctioned by the Mandal Revenue Officer dated 06.09.1985. The writ petitioners are no way concerned with the land comprising in Sy.Nos.324 to 335 admeasuring Ac.216.32 guntas. The petitioners have filed O.S.No.563 of 2001 and subsequently withdrew the same and again filed O.S.No.74 of 2004 on the file of the 2nd Additional District Judgte,Ranga Reddy District and the same is pending. The tile of the writ petitioners cannot be decided in writ petiton and the order of the Joint Collector is well reasoned one. The petitioners taking advantage of the status quo granted by this Court are trying to interfere with the possession of the respondents.

9. Heard Sri D. Prakash Reddy, learned Senior Counsel appearing for the petitioners and learned Government Pleader for Revenue

appearing on behalf of Respondents No. 1 to 4, Sri C. Pandu Ranga Rao learned counsel appearing for Respondents 5 to 39 and Sri C.Damodar Reddy, learned counsel appearing on behalf of the respondents No. 40 to 55.

10. Learned counsel appearing for the petitioners submits that the Revisional Authority-Joint Collector has not considered the jurisdictional issue and thereby the order passed by the Revisional Authority is liable to be set aside. A further submission has been made that the Revisional Authority has not considered the relief sought for by D-6 (Respondent No.25 herein) in Applications Nos. 296,297 and 298 of 1988 and the result thereon and therefore, the order passed by the Revisional Authority is liable to be set aside.

11. Sri C. Pandu Ranga Rao learned counsel appearing for the respondents 5 to 39 submits that the petitioners have already approached the Civil Court by filing suit and therefore, the writ petition is liable to be dismissed. He would further contend that Item No. 20 of the plaint schedule comprises only 4800 square yards and therefore, the extent of the property put to auction by the Commissioner cannot be more than 4800 square yards. A further submission has been made that Mandal Revenue Officer while rectifying the entries in the revenue records has not followed the procedure prescribed under the A.P. Rights and Pattadars Pass-Books Act, 1971 and Rules framed there under and therefore, the Revisional Authority is justified in remanding the matter back to the Mandal Revenue Officer for denova enquiry.

12. Sri C. Damodar Reddy, learned counsel appearing for Respondents 40 to 55 submits arguments almost all in similar lines with that of Sri C.Pandu Ranga Rao. Learned counsel for the parties submitted extensive arguments touching the merits of the case. In view of the order proposed to be passed, I am not inclined to refer their respective contentions in detail.

13. The matter came to be remanded to Joint Collector by virtue of the order passed in Writ Appeal No. 500 of 2001. For better appreciation, I may reproduce the order passed in Writ Appeal No.500 of 2001 and it is thus:-

> "Having heard the learned counsel for the parties, we are of the opinion that having regard to the fact that the joint Collector, while exercising his power of revision, did not issue any notice upon restoration of the application filed by the respondent herein to the appellant, it will be fit and proper that the Joint Collector decides the matter on merit strictly in terms of Section 9 of the A.P. Rights in Land and Pattadar Pass Books Act, 1971. It would be open to the appellant herein to raise the jurisdictional issue before the aid authority. Having regard to the facts and circumstances of this case, the appellant herein is hereby directed to appear before the Joint Collector within three (03) days from date, whereupon the joint Collector may fix a date of hearing."

14. In pursuance of the order passed and direction given in the Writ Appeal, the petitioners appeared before the Joint Collector and filed preliminary objections with regard to the jurisdictional issue. The principal objection taken by the petitioners is that the relief sought for by the Defendant No.6 who is the respondent NO.25 herein to declare the entries made in the revenue records in favour of Petitioners 1 to 12 herein as void has been rejected and thus the Revisional Authority is barred from deciding the same issue. During the course of arguments he took me to the preliminary objections filed by the petitioners herein before the Joint Collector. Para 2(a) of the Preliminary Objections needs to be extracted and it is thus:-

> "The respondents most respectfully submits that this Hon'ble Authority is not having inherent

jurisdiction, much less, jurisdiction, to adjudicate the appeal before this Hon'ble Authority on the following grounds:-

(i) The prayer in the present appeal before this Hon'ble Authority is same as that of the prayer in Application NO. 297 and 298 of 1988 in C.A.No.7 of 1958. The very same appellants herein preferred three applications viz., application Nos. 295/88, 297 and 298/88 in C.S.No.7/58 with the following prayers:-

1. Application No. 295/88:-

Prayer: Application under Order 20 Rule 18 R/W Sec. 151 C.P.C. praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to direct the 13th respondent to divide the land of an extent of Ac. 216.32 guntas bearing new S.No. 324 to 335 (old S.No.1 to 12) of Narkhoda village, Shamshabad Mandal, between the defendants 2 to 12 and 14 to 22.

2. Appliation No. 297/88:

Prayer : Application under Sec. 151 of CPC praying that in the circumstances stated in the affidavit in application No. 295/88 the High Court will be pleased to declare the entries made in the Revenue Records the land in favour of the respondents 1 to 12 as null and void.

3.Appliation NO. 298/88:

Prayer:- Application under section 151 of C.P.C. praying that in the circumstances stated in the affidavit filed in application No.295/88 the High Court will be pleased to direct the respondents 13 to 15 to correct the entries sin the pahanies and the other concerned revenue records substituting the names of defendants 2 to 12 and 14 to 22 in suit C.S.NO.7/58 in the place of the names of the respondents NO. 1 to 12.

It is clear from the above that the prayer in the present appeal as well as the prayers in application Nos. 297 and 298/88 is one and the

> same. The Hon'ble High Court of Andhra Pradesh passed a Common order dismissing the three applications viz., 295/1988, 297/88 and 298/88 in C.S.No. 7 of 1958 vide the judgment dt. 29-7-1988, (A copy of the judgment of the Hon'ble High Court is already on the file of this Hon'ble Authority, but for the purpose of convenience, these respondents furnish a copy of the judgment as Annexure-I). The issues in the present appeal is directly and substantially in issue in the former Application Nos. 297 and 298 of 1988 which were dismissed and which have become final. The parties are also same in both this appeals and application Nos. 297 and 298 of 1988."

15. It is the contention of the learned counsel for the petitioners that the Joint Collector has not taken into consideration the prayer sought for by Defendant NO.6 who is 25th respondent herein in an application Nos. 297 and 298/88 and thereby committed error in remanding the matter to the Mandal Revenue Officer for denova enquiry. I have gone through the order impugned in the writ petition. The Revisional Authority-Joint Collector refers to Application No. 295 of 1988 only. But he omitted to refer the prayer sought for by D-6 who is Respondent No.25 in the Application Nos. 297 and 298 of 1988. What is referred in the order impugned in the writ petition is the Application No. 295/88. The relief sought for in each of the applications is different. More particularly the relief sought for in Application No. 297 of 1988 relates to declaration of the entries made in the revenue records mutating the land in favour of the petitioners herein as null and void. It is explicit from the order impugned in the writ petition that the Joint Collector did not refer to the relief sought for by one of the respondents i.e. Respondent No.25 in the Application No.297 and 298 of 1988 and thereby erred in remanding the matter back to the Mandal Revenue

Officer for denova enquiry.

16. In these circumstances, I am of the view that the order impugned in the writ petition needs to be set aside and the matter is remitted back to the revisional authority-Joint Collector to consider the matter afresh keeping in view of the relief sought for by D-6 (Respondent No.25 herein) in Applications No.297 and 298 of 1988 and orders passed thereon.

17. Accordingly, the writ petition is allowed setting aside the order dated 29-4-2002 passed in Case No. 05/3633/2001 and the matter is remitted back to the Joint Collector for fresh disposal, after considering the order passed on Application Nos. 297 and 298 of 1988 filed by D-6 (Respondent No.25 herein) within two months from the date of receipt of a copy of this order. No order as to costs.

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Justice B.Seshasayana Reddy

15th June, 2006
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THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

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